

## NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 4-99)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
Z-			06-0711-05F

For use by Office of Administrative Law (OAL) only

2006 JUL 11 PM 2:59

OFFICE OF ADMINISTRATIVE LAW

NOTICE	REGULATIONS
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AGENCY WITH RULEMAKING AUTHORITY

Department of Transportation - Outdoor Advertising

AGENCY FILE NUMBER (if any)

## A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
Outdoor Advertising	4	2240	June 21, 2006
3. NOTICE TYPE	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
<input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	James Arbis	(916) 654-6413	( )
OAL USE ONLY	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE
<input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn			

## B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
Outdoor advertising: Noncommercial messages	

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics-related)

SECTION(S) AFFECTED (List all section number(s) individually)	ADOPT
	AMEND
	Section 2240 (add new subsection (e))
TITLE(S)	REPEAL
4	

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code, § 11346)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code, §§ 11349.3, 11349.4)	<input checked="" type="checkbox"/> Emergency (Gov. Code, § 11346.1(b))	<input type="checkbox"/> Emergency Readopt (Gov. Code, § 11346.1(h))	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, § 11346.1)
<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Government Code §§ 11346.2 - 11346.9 prior to, or within 120 days of, the effective date of the regulations listed above.				
<input type="checkbox"/> Print Only	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, § 100)	<input type="checkbox"/> Other (specify) _____		

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §§ 44 and 45)

5. EFFECTIVE DATE OF REGULATORY CHANGES (Gov. Code, §§ 11343.4, 11346.1(d))

<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> Effective other (Specify) _____
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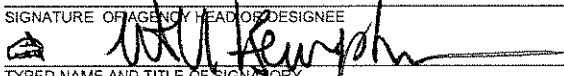
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
James Arbis	(916) 654-6413	( )	

8.

I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE	DATE
	6-21-06
TYPED NAME AND TITLE OF SIGNATORY	
WILL KEMPTON, Director	

Amend title 4, division 6, chapter 1, section 2240, by adding a new subsection (e):

**§ 2240. Scope**

(a) The purpose of this Division is to implement, interpret, make specific, and otherwise carry out the provisions of the California Outdoor Advertising Act, Business and Professions Code Sections 5200, et seq.

(b) The provisions of this Division apply to the placing of a Display in the following areas:

(1) A Display that is placed within 660 feet from the edge of the right of way of an interstate or a primary highway and is visible from the highway, including a Display located in an incorporated area.

(2) A Display that is placed beyond 660 feet from the edge of the right of way and is designed to be viewed primarily from an interstate or a primary highway, including a Display located in an incorporated area.

(3) A Display placed and visible from any other highway in an unincorporated area.

(c) A Display that violates the provisions of this Division is deemed to be in violation of the Outdoor Advertising Act.

(d) The provisions set forth in this Division are cumulative to all other applicable laws and regulations controlling a Display.

(e) Nothing herein prohibits placing noncommercial messages on any lawfully erected Display, including on-premise displays.

## FINDING OF EMERGENCY

The Department of Transportation finds an emergency exists, and it is necessary for the immediate preservation of the public peace, health and safety, or general welfare that this regulation be adopted as an emergency regulation.

### Agency Statement of Facts Showing Need for Immediate Action

California is world renown for the beauty of its landscapes and scenery. Billboards and other roadside advertising are carefully controlled by the federal Highway Beautification Act and California's Outdoor Advertising Act, to preserve the natural, uncluttered splendor of California's highways and byways, as well as to reduce driver distractions.

The federal Highway Beautification Act (23 U.S.C. 131) requires each state to adopt and implement its provisions or lose 10 percent of its federal-aid highway funds. California is allocated \$3.36 billion in this fiscal year, so noncompliance would cost the State \$336 million for the rest of this fiscal year alone. This penalty would continue on an annual basis as long as California is not in compliance with federal law.

California's Outdoor Advertising Act, Business and Professions Code section 5200 et seq., is implemented by regulations found in title 4 of the California Code of Regulations, division 6, chapter 1. These provisions are designed to comply with the federal requirements, as well as including other, more stringent requirements adopted by the State to control the location, size, and spacing of billboards.

On March 23, 2006, Judge Charles Breyer of the U. S. District Court ruled the Outdoor Advertising Act unconstitutionally chilled First Amendment rights, by allowing "commercial" messages, such as "on-premise business identification signs" in areas where off-premise noncommercial messages would be prohibited (for example, political signs). On April 11, 2006, the Court ordered the Department to adopt a regulation clarifying that noncommercial advertising can be placed on any legally-placed outdoor advertising display. The Department filed a declaration with the Court on May 11, 2006, "updating the Court on the status of its compliance. . ." in which it was represented regulations were in the preparation stage.

This emergency regulation is necessary to comply with the Court's ruling and preserve vital transportation funding. This emergency regulation is based upon the federal requirements rather than the challenged California law. This regulation will allow the State to continue to preserve California's beauty and traffic safety while, at the same time, ensuring that California does not lose a substantial amount of federal funding. That funding is used for general highway building and maintenance purposes. It has already been allocated to a variety of vital projects that will have to be halted or curtailed. The loss of the federal money will affect the safety and welfare of drivers throughout the State.

## Authority and Reference Citations

Authority: Business and Professions Code section 5250.

Reference: Business and Professions Code section 5200 et seq., 23 U. S. C. 131; title 4, Code of California Regulations, sections 2240, 2241, 2243; "Memorandum and Order Re: Motions for Summary Judgment," *Maldonado v. Will Kempton, in his capacity as Director of the California Department of Transportation*, United States District Court (N. D. Cal.), March 23, 2006.

## Informative Digest

California has regulated outdoor advertising displays since 1933. However, until the provisions of the federal Highway Beautification Act were implemented by California in 1967, there were no substantive State law provisions regarding the placing of billboards.

The Highway Beautification Act of 1965 (23 U.S.C. 131) requires each state to adopt and implement its provisions or lose 10 percent of its federal aid highway funds. California is allocated \$3.36 billion in this fiscal year, so noncompliance would cost the State \$336 million for the rest of this fiscal year alone. This penalty would continue on an annual basis as long as California is not in compliance with federal law.

California's Outdoor Advertising Act, Business and Professions Code section 5200 et seq., is implemented by regulations found in title 4 of the California Code of Regulations, division 6, chapter 1. These provisions are designed to comply with the federal requirements, as well as including other, more stringent requirements adopted by the State to control the location, size, and spacing of billboards.

On March 23, 2006, Judge Charles Breyer, of the U. S. District Court, ruled the Outdoor Advertising Act unconstitutionally chilled First Amendment rights by allowing "commercial" messages, such as "on-premise business identification signs" in areas where off-premise noncommercial messages would be prohibited (for example, political signs).

This emergency regulation will clarify that the regulations do not prohibit placing noncommercial messages on any lawfully erected Display, including on-premise displays, as required by the Court.

## Specific Agency Statutory Requirements

The Department of Transportation is charged with enforcing the Outdoor Advertising Act and make orders and regulations in that regard, Business and Professions Code section 5250.

#### Local Mandate Determination

The Department has determined this emergency regulation will not impose a mandate on local agencies or school districts.

#### Fiscal Impact Form 399

Form 399 is attached. There is no fiscal impact in adopting this regulation; however, there is the possibility of a large, adverse impact if the regulation is not adopted.

#### Compliance with section 11349.1

The Department has determined compliance has been made with all provisions of section 11349.1.

**ECONOMIC AND FISCAL IMPACT STATEMENT  
(REGULATIONS AND ORDERS)**

STD. 399 (Rev. 2-98)

See SAM Sections 6600 - 6680 for Instructions and Code Citations

DEPARTMENT NAME Department of Transportation	CONTACT PERSON James Arbis	TELEPHONE NUMBER (916) 654-6413
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Outdoor Advertising Noncommercial Speech		NOTICE FILE NUMBER Z

**ECONOMIC IMPACT STATEMENT****A. ESTIMATED PRIVATE SECTOR COST IMPACTS** (Include calculations and assumptions in the rulemaking record.)

1. Check the appropriate box(es) below to indicate whether this regulation:

- |   |  |
|---|--|
| <input type="checkbox"/> a. Impacts businesses and/or employees | <input type="checkbox"/> e. Imposes reporting requirements   |
| <input type="checkbox"/> b. Impacts small businesses            | <input type="checkbox"/> f. Imposes prescriptive instead of performance standards  |
| <input type="checkbox"/> c. Impacts jobs or occupations         | <input type="checkbox"/> g. Impacts individuals  |
| <input type="checkbox"/> d. Impacts California competitiveness  | <input checked="" type="checkbox"/> h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.) |

h. (cont.) Conforms to court order without effect on businesses, competitiveness, etc.

(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: N/A Describe the types of businesses (Include nonprofits): \_\_\_\_\_

Enter the number or percentage of total businesses impacted that are small businesses: \_\_\_\_\_

3. Enter the number of businesses that will be created: N/A eliminated: \_\_\_\_\_

Explain: \_\_\_\_\_

4. Indicate the geographic extent of impacts: ☐ Statewide ☐ Local or regional (list areas): N/A5. Enter the number of jobs created: \_\_\_\_\_ or eliminated: \_\_\_\_\_ Describe the types of jobs or occupations impacted: N/A

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

☐ Yes ☐ No If yes, explain briefly: N/A**B. ESTIMATED COSTS** (Include calculations and assumptions in the rulemaking record.)1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ 0

- |  |                                |              |
|--|--------------------------------|--------------|
| a. Initial costs for a small business: \$ _____        | Annual ongoing costs: \$ _____ | Years: _____ |
| b. Initial costs for a typical business: \$ _____      | Annual ongoing costs: \$ _____ | Years: _____ |
| c. Initial costs for an individual: \$ _____           | Annual ongoing costs: \$ _____ | Years: _____ |
| d. Describe other economic costs that may occur: _____ |                                |              |

**ECONOMIC AND FISCAL IMPACT STATEMENT *cont.* (STD. 399, Rev. 2-98)**

2. If multiple industries are impacted, enter the share of total costs for each industry: N/A
3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. (Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.): \$ N/A
4. Will this regulation directly impact housing costs? ☐ Yes ☒ No If yes, enter the annual dollar cost per housing unit: \$ \_\_\_\_\_ and the number of units: \_\_\_\_\_
5. Are there comparable Federal regulations? ☐ Yes ☒ No Explain the need for State regulation given the existence or absence of Federal regulations: \_\_\_\_\_
- Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ 0

**C. ESTIMATED BENEFITS** (Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. Briefly summarize the benefits that may result from this regulation and who will benefit: Safeguards 10% of federal aid highway funds (\$336 million in current fiscal year)
2. Are the benefits the result of: ☒ specific statutory requirements, or ☐ goals developed by the agency based on broad statutory authority?  
Explain: 23USC131 imposes 10% penalty for noncompliance with Fed. Highway Beautification Act; regulation insures compliance
3. What are the total statewide benefits from this regulation over its lifetime? \$ 3.3 billion (10-year estimate)

**D. ALTERNATIVES TO THE REGULATION** (Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: The court specified that regulatory changes were necessary to give the public notice, not just a change in enforcement practice.
2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:
- |                |                        |                |
|----------------|------------------------|----------------|
| Regulation:    | Benefit: \$ <u>N/A</u> | Cost: \$ _____ |
| Alternative 1: | Benefit: \$ _____      | Cost: \$ _____ |
| Alternative 2: | Benefit: \$ _____      | Cost: \$ _____ |
3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: N/A

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? ☐ Yes ☒ No  
Explain: Court ordered regulatory changes; ruling changes in actions/procedures were not adequate.

**E. MAJOR REGULATIONS** (Include calculations and assumptions in the rulemaking record.)  
Cal/EPA boards, offices and departments are subject to the following additional requirements per Health and Safety Code section 57005.

**ECONOMIC AND FISCAL IMPACT STATEMENT *cont.* (STD. 399, Rev. 2-98)**

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million ? ☐ Yes ☒ No (If No, skip the rest of this section)

2. Briefly describe each equally as effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: \_\_\_\_\_

Alternative 2: \_\_\_\_\_

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: \$ \_\_\_\_\_ Cost-effectiveness ratio: \_\_\_\_\_

Alternative 1: \$ \_\_\_\_\_ Cost-effectiveness ratio: \_\_\_\_\_

Alternative 2: \$ \_\_\_\_\_ Cost-effectiveness ratio: \_\_\_\_\_

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**FISCAL IMPACT STATEMENT**

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A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years)

☐ 1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

☐ a. is provided in (Item \_\_\_\_\_, Budget Act of \_\_\_\_\_) or (Chapter \_\_\_\_\_, Statutes of \_\_\_\_\_)

☐ b. will be requested in the \_\_\_\_\_ Governor's Budget for appropriation in Budget Act of \_\_\_\_\_  
(FISCAL YEAR)

☐ 2. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

☐ a. implements the Federal mandate contained in \_\_\_\_\_

☐ b. implements the court mandate set forth by the \_\_\_\_\_  
court in the case of \_\_\_\_\_ vs. \_\_\_\_\_

☐ c. implements a mandate of the people of this State expressed in their approval of Proposition No. \_\_\_\_\_ at the \_\_\_\_\_  
election; (DATE)

☐ d. is issued only in response to a specific request from the \_\_\_\_\_  
\_\_\_\_\_, which is/are the only local entity(s) affected;

☐ e. will be fully financed from the \_\_\_\_\_ authorized by Section \_\_\_\_\_  
(FEES, REVENUE, ETC.)  
\_\_\_\_\_ of the \_\_\_\_\_ Code;

☐ f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit.

☐ 3. Savings of approximately \$ \_\_\_\_\_ annually.

☒ 4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law and regulations.



**ECONOMIC AND FISCAL IMPACT STATEMENT *cont. (STD. 399, Rev. 2-98)***

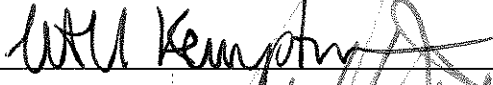


- ☒ 5. No fiscal impact exists because this regulation does not affect any local entity or program.
- ☐ 6. Other.

**B. FISCAL EFFECT ON STATE GOVERNMENT** *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

- ☐ 1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year. It is anticipated that State agencies will:
- ☐ a. be able to absorb these additional costs within their existing budgets and resources.
- ☐ b. request an increase in the currently authorized budget level for the \_\_\_\_\_ fiscal year.
- ☐ 2. Savings of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
- ☐ 3. No fiscal impact exists because this regulation does not affect any State agency or program.
- ☐ 4. Other.

**C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS** *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

- ☐ 1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
- ☒ 2. Savings of approximately \$ 336 million in the current State Fiscal Year.
- ☐ 3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
- ☐ 4. Other.

SIGNATURE 	TITLE DIRECTOR
AGENCY SECRETARY <sup>1</sup> 	DATE June 30 2006
DEPARTMENT OF FINANCE <sup>2</sup> APPROVAL/CONCURRENCE 	PROGRAM BUDGET MANAGER DATE

1. The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.
2. Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399.